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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,317	12/16/2003	Gerald Oliver Roeback		5449

7590 05/17/2005  
Gerald Roeback  
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EXAMINER

GEHMAN, BRYON P

ART UNIT PAPER NUMBER

3728

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/736,317

Applicant(s)

ROEBACK ET AL.

Examiner

Bryon P. Gehman

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3728

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it includes legal phraseology, i.e. "said" in line 4 and "means" in lines 9 and 10. Correction is required. See MPEP § 608.01(b).

3. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

#### Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
  1. Field of the Invention.

Art Unit: 3728

2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
  - (f) Brief Summary of the Invention.
  - (g) Brief Description of the Several Views of the Drawing(s).
  - (h) Detailed Description of the Invention.
  - (i) Claim or Claims (commencing on a separate sheet).
  - (j) Abstract of the Disclosure (commencing on a separate sheet).
  - (k) Drawings.
  - (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

The section titled CROSS REFERENCE TO RELATED APPLICATION is improper, as applicants are to refer to other copending applications they have filed, not prior art references. This portion needs to be corrected by omission of the cited references.

4. The spacing of the lines of the specification is such as to make reading and entry of amendments difficult. **New application papers with lines double spaced on good quality paper are required.**

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-20 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. Elements of the claims should be defined by a single, consistent term or phrase to be definite. The structure must be organized and correlated

in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

The claims each comprise a single sentence and accordingly, the first word must be capitalized. Accordingly, for example, claim 1 should begin "A formable...", as "A" is the first word of the claim, not the claim identification.

In claim 4, "the opening" is indefinite, as several openings have been defined. Which opening is this? In line 2, "a means for an inflation pump" is indefinite, since no function is specified by the word(s) modifying "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim 5 is redundant, as the subject matter is already set forth in parent claim 1.

In claim 6, line 1, "further" is indefinite, as nothing of the structure of the dispenser has as yet been defined to justify "further" structure being defined.

Claim 7 is redundant, as the subject matter is already set forth in parent claim 6, lines 1-2.

In claims 8 and 9, it is indefinite whether applicants are referring to the previously recited "flexible material" of claim 6 or some other new material.

Claim 7 is redundant, as the subject matter is already set forth in parent claim 6, lines 1-2.

Claim 10 is redundant in view of parent claim 6, lines 3-4.

In claim 12, line 2, "the sport holding device" is indefinite, as it lacks antecedent basis and it is unclear how applicants' structure "holds" a sport.

In claim 13, line 1, it is indefinite how applicants' device is a "sports dispensing device". How are "sports" dispensed? In lines 2-3, "the top frame" lacks antecedent basis. In line 3, "the apparatus" lacks antecedent basis. In line 4, it is indefinite what antecedent is "attached". In lines 4-5, "also a bottom frame..." is indefinite as to its meaning. In line 5, "the dispenser" lacks antecedent basis. Claim 19 has the identical indefiniteness.

In claims 14-16, line 1 of each, "adjustable ...dispenser device" is inconsistent terminology with claim 13, "adjustable...dispensing device".

In claim 14, line 2, "means of adjusting" is inconsistent with claim 13, line 5, "means for adjusting".

In claim 15, lines 1-2, "the flexible elongated member" is lacks antecedent basis from parent claim 13 and would be inconsistent with claim 14, "one or more". See also claim 16 for the same problem. In line 2, "is lined vertically" is indefinite as to its meaning. Also in line 2, "the body of the sports holder" is indefinite, as both nouns lack antecedent basis. In line 3, "lined downwardly" is indefinite as to its meaning. See also claim 16. In lines 3-4, "the apparatus body material" lacks antecedent basis. See also claim 16.

In claim 17, line 1, "an adjustable elongated cylindrical sports holder" lacks antecedent basis from claim 13. See also claim 18. In line 2, "said apparatus" lacks antecedent basis.

In claim 18, line 2, "the rear opening" lacks antecedent basis and "lease" does not make sense. In line 3, "the tubular embodiment" lacks antecedent basis.

7. Claims 5, 11, 19 and 20 are objected to under 37 CFR 1.75 as being substantial duplicates of claims 1, 6, 13 and 7. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Thornton (1,737,065), Albarelli (5,150,970) and Smith (5,909,833). Each discloses a formable hanging device for dispensing multiple sports balls comprising an elongated cylindrical collapsible shell (Figure 2; Figure 1; Figure 2; respectively), a plurality of openings (at 4 and between the netting; at 30 and 26 (before fusing) and between the mesh netting; at 12, at 16 and between the netting) and means for accommodating an inflation pump (any location within the device or in the netting can serve to accommodate an inflation pump. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the

Art Unit: 3728

prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claim 2, the netting defines numerous side openings.

As to claim 3, each discloses a bottom opening (in Albarelli prior to being fused).

As to claim 4, the openings provide various "means" relative to an imaginary inflation pump.

10. Claims 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Thornton, Morss (1,778,225), Albarelli and Smith. Each discloses an adjustable collapsible cylindrical dispensing device consisting of a frame unit opening (at 4; between 15 and 16; at 16; at 12 or 16), a top frame including a means for hanging (4; 25, 27; 40; 30) and an adjusting means (flexibility of netting 3; flexibility of the wall of 13; flexibility of the netting; flexibility of the netting and element 20).

As to claim 14, the sidewall of each comprises flexible elongated members.

As to claims 15 and 16, the netting of Thornton, Albarelli and Smith is lined vertically and downwardly and secured by fastening devices (4; 30; 16).

As to claim 17, the means for hanging can be hung from various hanging devices (hooks, pegs, door handle, etc.).



Art Unit: 3728

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 3 above, and further in view of Morss. Morss discloses opposed opening in a ball holder comprised of elasticized openings (at 15 and 16). To modify the device of any one of Thornton, Albarelli and Smith employing elasticized openings would have been obvious in order to retain the ball within the device, but facilitate dispensing of the balls when so desired, as taught by Morss.

13. Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meadow (2,573,770) in view of Pollak et al. (3,225,806). Meadow discloses a carrying bag as a collapsible hanging elongated cylindrical dispenser comprising a circular wire frame unit (10) covered by a flexible covering (31) of flexible material of non-mesh material. Pollak et al. disclose a carrying bag including a formable pocket (23) for holding a content. To modify the dispenser of Meadow employing a pocket on the flexible material would have been obvious in order to hold additional contents, as suggested by Pollak et al.. To provide a pocket of various sizes for particular contents would not involve an inventive step, as pockets come in various sizes and shapes. To

Art Unit: 3728

recite "a pocket for an item" only describes the intended use of the pocket, and not its contents.

As to claim 8, Meadow discloses the flexible material of cloth.

As to claim 9, to employ plastic as the material would have been obvious to provide waterproof properties, as plastic carrying bags are noted to be old and well known.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

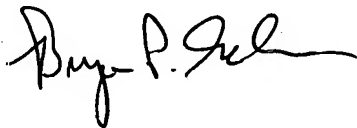
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are ball holding devices..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

Art Unit: 3728

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" and last name "Gehman" clearly distinguishable.

Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG